IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **Criminal Appeal No.813-DB of 1997**

DATE OF DECISION: August 23rd, 2007.

Bhappa Singh @ Basant Singh and others

.....Appellants

versus

The State of Punjab

.....Respondent

2. **Criminal Revision No.1221 of 1997**

Chhinder Kaur

……Petitioner

versus

The State of Punjab

.....Respondent

CORAM:- HON'BLE MR.JUSTICE JASBIR SINGH

HON'BLE MRS.JUSTICE NIRMAL YADAV

Present: Mr.Vinod Ghai, Advocate for the appellants in Crl. Appeal No.813-DB of 1997

Mr.A.P.S. Deol, Advocate for the petitioner in Crl.Revision No.1221 of 1997.

Mr.V.K. Jindal, Additional A.G., Punjab

NIRMAL YADAV, J.

Appellants Bhappa Singh @ Basant Singh, Jagraj Singh @ Raj and Roop Singh have challenged their conviction and sentence, as ordered vide judgment and order passed by the Additional Sessions Judge, Mansa dated 27.11.1997, whereby they have been convicted under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment each and to pay a fine of Rs.1000/-each and in

default of payment of fine to further undergo R.I. for six months each while Criminal Revision No.1221 of 1997 has been filed by Chhinder Kaur, mother of deceased Jagsir Singh, who was a young man of 21 years of age and driver by profession, for grant of compensation. Both Criminal Appeal No.813-DB of 1997 and Criminal Revision No.1221 of 1997 are directed against the above mentioned judgment and order dated 27.11.1997 and as such, they are being disposed of by this common judgment.

On 20.2.1996 at 4.30 P.M., a wireless message, Ex.DD was received by Station House Officer, Mansa that Jagsir Singh, son of Gurdev Singh, resident of Tandia was admitted in Civil Hospital, Mansa. Sub Inspector Manohar Singh, the Investigating Officer reached Civil Hospital, Mansa and moved application, Ex.PB before the Medical Officer to inquire as to whether Jagsir Singh, injured was fit to make statement or not. Vide endorsement, Ex.PB/1 made at 6.00 P.M., Dr.Kulwant Singh opined that patient had already been referred to Christian Medical College, Ludhiana for further treatment. The Investigating Officer could not find any relative or representative of Jagsir Singh, injured in Civil Hospital, Mansa. He, thereafter, went to the house of Jagsir Singh, but none was found present there. On the next day i.e. 21.2.1996, Manohar Singh, SI/SHO, Police Station Jaurkian, received wireless message, Ex.PP from the Incharge, Christian Medical College, Ludhiana with regard to admission of Jagsir Singh, therefore, SI-Manohar Singh went to Christian Medical

College, Ludhiana and moved an application, Ex.PD to seek opinion if Jagsir Singh was fit to make statement or not. Vide endorsement, Ex.PD/1, Dr. Mathew P. Daniel gave the opinion that Jagsir Singh was not fit to make statement. However, Chhinder Kaur, mother of Jagsir Singh was present and her statement, Ex.PH was recorded. On the basis of that statement, FIR, Ex.PH/2 was recorded at 9.30 P.M. in Police Station Jaurkian. Chhinder Kaur stated that she had two sons Jagsir Singh and Balbir Singh, besides one daughter Kiranjit Kaur. Balbir Singh was of unsound mind. Jagsir Singh was residing with her sister Sukhpal Kaur at village Ghadani, Police Station Payal, District Ludhiana for the past six years and was working as driver. On 18.2.1996, marriage of her daughter Kiranjit Kaur was performed and Jagsir Singh had come to village Tandia 15 days prior to the marriage for making arrangements. On 20.2.1996, complainant along with her brother Mandar Singh and son Jagsir Singh was coming back from village Raipur and going to Mansa after settling the accounts of the tent owner. At about 1.00 P.M. when they were present at the Bus Stand, Raipur, Bhappa Singh, Roop Singh and Jagraj Singh sons of Angrej Singh came there on a tractor. After alighting from the tractor, Bhoop Singh inflicted *Gandasa* injury on the head of Jagsir Singh. He raised *Lalkara* to take revenge for the murder of their father. Thereafter, Roop Singh inflicted gandasa blow which hit left upper arm of Jagsir Singh. Jagraj Singh chased Mandar Singh, to cause injuries on his person. However,

Mandar Singh managed to escape by running away towards the village. Chhinder Kaur raised alarm. Meanwhile, Bhappa Singh inflicted another *Gandasa* blow on the left eye brow of Jagsir Singh. Several people were attracted to the spot and accused ran away on the tractor along with their respective weapons. Chhinder Kaur after arranging a tractor trolley, brought Jagsir Singh to village Tandia and narrated the entire incident to her husband Gurdev Singh and father-in-law Nikka Singh. Thereafter, they removed Jagsir Singh to Civil Hospital, Mansa from where he was referred to Christian Medical College, Ludhiana. According to Chhinder Kaur, the accused wanted to take revenge for their father Angrej Singh's murder, which took place 7 years ago. In that case Gurdev Singh, husband of Chhinder Kaur, Gamdoor Singh, brother-in-law of Chhinder Kaur and Bakhshish Singh, son of Mal Singh, resident of Tandia were convicted and sentenced to undergo rigorous imprisonment for 20 years each while three persons, namely, Jang Singh, Ex-Sarpanch, Jaswant Singh son of Inder Singh and Jagdev Singh, another brother-in-law of Chhinder Kaur were acquitted. Since then Chhinder Kaur was apprehending danger to the life of her son Jagsir Singh, therefore, she sent him to her sister Sukhpal Kaur's place at Village Ghadani.

Jagsir Singh succumbed to his injuries on 23.2.1996 at 7.15 P.M. in Christian Medical College, Ludhaina, therefore, the offence under Section 307 IPC was converted into the one under Section 302 IPC.

On completion of investigation, the Investigating Officer took into possession, the blood-stained turban of Jagsir Singh produced by Bhupinder Singh, son of Jagat Singh. He also lifted blood stained earth from the place of occurrence and prepared site plan, Ex.PR with its correct margin notes. Accused Jagraj Singh and Bhappa Singh were arrested on 29.2.1996. On interrogation, Jagraj Singh made disclosure statement and got recovered Gandasa, Ex.P2 and Bhappa Singh in pursuance of his disclosure statement got recovered Gandasa, Ex.P1, which were taken into possession by the Investigating Officer. The accused were charged under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

The prosecution in order to prove its case, produced as many as 8 witnesses and tendered in evidence Ex.PX, PY and PZ, reports of Chemical Examiner and Serologist. PW1-Dr.Kulwant Singh, examined Jagsir Singh on 20.2.1996 at 3.30 P.M. and found the following:-

"1. 25cm x 6cm incised wound on the fronto prioto occipital region lateral aspect left side. The skull wound was fracture. Brain matter was exposed. Injury was present 5 cm above the left pinna. Transversely placed. Fresh bleeding was present. Advised x-ray skull.

2. 1cm x 0.3cm incised wound on the left eye brow transversely placed fresh bleeding was present.

3. 4cm x 2cm incised wound on the medial aspect of left upper arm 11cms proximal to the elbow joint. Transversely placed. Fresh bleeding was present.

Patient was vomiting. Injury No.1 was declared dangerous to life. Injuries No.2 and 3 were simple in nature. The probable duration of injuries was within six hours. All the three injuries were caused by sharp edged weapon."

According to Dr.Kulwant Singh, the patient was referred to Ludhiana for further treatment at about 6.00 P.M. He further opined that all the injuries could have been caused by a *Gandasa*. PW2-Dr. Mathew P. Daniel had attended the injured in Christian Medical College, Ludhaina and found the following:-

"1. Open head injury.

2. Depressed skull bone fracture

3. Intracerebral bleed.

4. Scalp laceration

5. Cerebral contusion.

6. Laceration left.

Nature of injuries No.1,2,3 and 5 were dangerous to life, No.4 and 6 were simple injuries.

The injuries were caused by sharp-edged weapon

Duration fresh."

PW3-Dr.R.K. Karkara, Medical Officer, Civil Hospital, Ludhaina conducted the autopsy on the dead body of Jagsir Singh. According to him, death had occurred on 23.2.1996 at about 7.15 P.M. in the Christian Medical College and he found the following:-

> "In my opinion the cause of death in this case was due to haemorrhage and shock because of head injury which was sufficient to cause death in ordinary course of nature. All the injuries were antemortem in nature."

As per the opinion of the doctor, the cause of death in this case was due to haemorrhage and shock because of head injury, which was sufficient to cause death in the ordinary course of nature. The probable time between death and injuries was about 3 days and between death and post-mortem 24 hours.

PW4-Chhinder Kaur, mother of the deceased and PW5-Mandar Singh, maternal uncle of the deceased are the eye-witnesses. PW6-Constable Balour Singh had submitted case property to the Chemical Examiner. PW7-Gurdev Singh, HC submitted his affidavit, Ex.PO, and PW8-Manohar Singh, is the Investigating Officer.

When examined under Section 313 Cr.P.C., the accused denied the allegations against them and pleaded innocence and false implication. Bhappa Singh, accused stated that he along with his brother and Jagraj Singh have

been falsely implicated due to old enmity with the complainant, as her husband Gurdev Singh and others had murdered his father Angrej Singh and Jagraj Singh had appeared as prosecution witness. In that case, Gurdev Singh and his younger brother Gamdoor Singh were sentenced to life imprisonment. Accused Roop Singh took the defence that he along with Lakha Singh, Sarpanch of village Tandia, and Makhan Singh, Sarpanch of Chhapianwali had gone to attend the cremation of one Pritam Singh in village Atla Kalan at about 11.00 A.M. After attending the cremation of Pritam Singh, they came back in the evening. It is stated that Jagsir Singh was habitual eve teaser and had many known and unknown enemies. He was returning alone from village Ghadani where he was employed as tempo driver, and was injured by some unknown persons. Darshan Singh, son of Jit Singh resident of village Raipur had witnessed the occurrence and informed the Sarpanch of Village Raipur, who in turn, informed Chhinder Kaur about the occurrence. The accused also examined DW1-Lakha Singh and DW2-Gurdial Singh. Lakha Singh, Sarpanch of village Tandia stated that he along with Makhan Singh, Sarpanch of Village Chhapianwali, Bahadur Singh, Sarpanch of Village Mihan, Roop Singh and Mithu Singh had gone to village Atla Kalan to attend the cremation of Pritam Singh, his brother-in-law on 20.2.1996 at 8.30 AM and reached Atla Kalan at 11.00 A.M. They returned from village Atla Kalan at about 4.00 or 4.30 P.M. and accused Roop Singh remained with them throughout.

DW2-Gurdial Singh, Sarpanch of Village Atla Kalan stated that Pritam Singh of their village was married to sister of Lakha Singh, Sarpanch of Village Tandia. He died and was cremated on 20.2.1996. His cremation was attended by Lakha Singh, Sarpanch of Village Tandia, Mithu Singh, Makhan Singh, Sarpanch of Village Chhapianwali, Bahadur Singh, Sarpanch of Village Mihan and Roop Singh at about 11.00 A.M. and they went back at 4.00 or 4.30 P.M.

Taking into consideration the entire evidence on record, the learned trial Court convicted and sentenced the accused as noticed in para-1 above.

We have heard learned counsel for the parties and with their assistance, carefully scrutinized the evidence on record.

Learned counsel for the appellants has mainly attacked the prosecution case with regard to delay of 27 hours in lodging the FIR. It is argued that the delay has been utilized to manipulate the entire story. It was, in fact, not known to the relatives of Jagsir Singh as to who were the assailants. Learned counsel pointed out that as per Investigating Officer, he had reached the Civil Hospital, Mansa at 4.30 P.M., but he did not care to inquire if injured Jagsir Singh was admitted there or not and straightaway moved application, Ex.PB before the Medical Officer, whereas, in the normal circumstances, he should have inquired about the injured. Even when he was informed at 6.00 P.M. that injured had been referred to Christian Medical College, Ludhiana, he went to the village

of the injured. As per his version, on 20.2.1996, none of the relatives of the injured was found in the hospital at Mansa nor anybody was found in the village, therefore, he went to Christian Medical College, Ludhaina on the next day i.e. on 21.2.1996 and recorded the statement of Chhinder Kaur in Christian Medical College, Ludhiana at 4.30 P.M. It is pointed out that Mansa is at a distance of 15 kilometres from Village Raipur and Police Station Jaurkian is at a distance of 6 kilometres.

It is further argued that the complainant had a strong motive to implicate the accused persons. It is stated that about 7 years ago, murder of father of accused was committed by the husband and brother-in-law of Chhinder Kaur along with others and they were serving life imprisonment. Jagraj Singh was a witness in the said case and, therefore, he has also been falsely implicated in this case.

It is further argued on behalf of the appellants that from the evidence on record, it is well proved that none of the witnesses viz. PW4-Chhinder Kaur and PW5-Mandar Singh were present at the spot. It is pointed out that as per the prosecution, the occurrence took place at the bus stand of village Raipur, but the injured was first taken to his house and from there he was taken to Civil Hospital at Mansa, whereas, normally, in such circumstances, the anxiety is to directly remove the injured to the hospital. Even the conduct of Mandar Singh is highly doubtful. His statement is contradictory and he has made material

improvements. After the occurrence, he first went to village Tandia and then, accompanied by his another sister Sukhpal Kaur and Hardev Singh, came to the hospital. Learned counsel pointed out that as per the medico legal report, Nikka Singh, grandfather of the injured had brought him to the hospital and names of PW4-Chhinder Kaur and PW5-Mandar Singh do not find mention.

The next argument raised by learned counsel for the appellants is that occurrence had taken place in village Raipur, which is at a distance of 3 kilometres from village Tandia and, therefore, the accused could not have any prior knowledge about the presence of Jagsir Singh at the said place.

On the other hand, learned State counsel submitted that the presence of PW4-Chhinder Kaur and PW5-Mandar Singh along with Jagsir Singh at the place of occurrence is quite probable and natural. They were coming back after settling the accounts of tent owner and were present at the Bus Stand, Raipur. It is argued that the prosecution case is fully supported by two eye-witnesses Chhinder Kaur and Mandar Singh and is further corroborated by the medical evidence as well as the motive for causing murder of Jagsir Singh.

In the instant case, the prosecution case mainly rests on the testimony of PW4-Chhinder Kaur and PW5-Mandar Singh. PW4-Chhinder Kaur, mother of deceased Jagsir Singh has categorically stated that marriage of her daughter was performed on 18.2.1996. On 20.2.1996, she along with his

brother Mandar Singh and son Jagsir Singh had gone to settle the accounts of tent owner, as Jagsir Singh had to go back to village Ghadani where he was residing with her sister. She has further deposed that the accused had a strong motive to commit the murder of Jagsir Singh, as about 7 years ago, Angrej Singh, father of all the 3 accused was murdered for which her husband Gurdev Singh, brother-in-law Gamdoor Singh and Bakhshish Singh, son of Mal Singh, had been convicted and sentenced for life imprisonment. Besides Jagsir Singh, she had another son namely, Balbir Singh, who was not of sound mind and Jagsir Singh was the only son who would advance their genealogical tree, therefore, the accused wanted to commit his murder to take revenge for the murder of their father. The motive is a double-edged weapon and it can be used from either side. In fact, it is difficult to read the mind of any individual as to in which way or in what manner it works. Presence of PW4-Chhinder Kaur and PW5-Mandar Singh cannot be stated to be unnatural. Jagsir Singh and Mandar Singh must have come to attend the wedding of Kiranjit Kaur. On the date of occurrence they were accompanying Chhinder Kaur to tent owner's workplace in order to settle his accounts. Chhinder Kaur categorically stated that after visiting Raipur, they had to go to Mansa. The argument of the learned counsel that Mandar Singh's conduct in running away from the place of occurrence casts doubt with regard to his presence, cannot be accepted. As per the witnesses, the accused were armed with Gandasa and Bhappa Singh had already inflicted a

serious blow on the head of Jagsir Singh, therefore, the conduct of Mandar Singh in running away from the spot cannot be stated to be unnatural. No person would like to put his life in danger to save the life of other person even if the other person is closely related to him. Another argument that conduct of Chhinder Kaur in taking the injured directly to the village being unnatural and abnormal, is also not tenable. Since Chhinder Kaur was alone with the injured, she must have thought of taking along some male member from her family for taking the injured to hospital or it may be possible that she wanted to pick up some money from her house. In her cross-examination, she has stated that about Rs.1000/- were paid to the tent owner and she had no money with her. In this situation, she first went to village Tandia and thereafter, her husband Gurdev Singh and father-in-law Nikka also accompanied the injured to hospital. Rather, it proved to be a wise step to seek the help of male members because the doctors had referred the patient from Civil Hospital, Mansa to Christian Medical College, Ludhiana.

Much stress has been laid by the learned counsel for the appellants on the argument that delay in lodging the FIR completely demolishes the prosecution case and lends corroboration to the defence put forth by the appellants, that they have been falsely implicated on account of previous enmity. It is true that there is some delay in recording the statement. However, the delay is

not at all fatal to the prosecution case. As per the eye-witness account, the occurrence took place at 1.00 P.M. on 20.2.1996. The injured was first taken to village Tandia and thereafter to Civil Hospital, Mansa. Dr. Kulwant Singh has categorically stated that injured was brought to hospital at 3.30 P.M. He sent the intimation to Police Station Jaurkian, which was received at 4.30 P.M. On receiving the information, Manohar Singh, Investigating Officer reached Civil Hospital, Mansa, where he was informed by Dr. Kulwant Singh that the injured had already been referred to Christian Medical College, Ludhaina. Christian Medical College, Ludhiana was at a distance of 185 kilometres, therefore, the Investigating Officer first went to the village of the injured. None was found present at the house of the injured as Chhinder Kaur as well as her husband and father-in-law had accompanied the injured to Christian Medical College, Ludhiana. The Investigating Officer, therefore, reached the Christian Medical College, Ludhana on the next day and recorded the statement of Chhinder Kaur, as she was the only person present in the hospital to give the eye-witness account. Learned counsel pointed out that Mandar Singh in his statement, Ex.DA, made before the police, stated that Nikka Singh and Gurdev Singh had gone back to the village. In fact, there is nothing abnormal in their going back to the village. May be they had gone to make arrangements for money, which might have been required for hospital expenses, or for taking clothes, etc. for patient and attendant(s) in the hospital.

Admittedly, the accused and complainant are known to each other, therefore, there is no question of mistaken identity of the accused. Even the motive appears to be on the part of the accused persons to take revenge for the murder of their father as Gurdev Singh, his brother Gamdoor Singh, etc. were held to be guilty and convicted for the murder. Merely because PW4-Chhinder Kaur and PW5-Mandar Singh are the near relations of the deceased, their testimonies cannot be discarded. It has, of course, come in the testimonies of PW4-Chhinder Kaur and PW5-Mandar Singh that many persons were attracted to the scene of crime, but it is also a well known fact that no one likes to associate himself with the investigation of a murder case. The presence of PW4-Chhinder Kaur, mother and PW5-Mandar Singh, maternal uncle of Jagsir Singh (deceased) at the place of occurrence was quite natural and has been fully established from their testimonies. Their testimonies further find support from the medical evidence that Jagsir Singh was given a Gandasa blow on the head with force causing incised wound 25cm x 6cm on the fronto parietal occipital region, which proved to be fatal.

Learned counsel for the appellants, of course, pointed out that the accused had no immediate motive as their father had been murdered 7-8 years ago. The argument is quite fallacious. It has come in evidence that Gurdev Singh and Gamdoor Singh had come to the village on parole and had performed the marriage of Kiranjit Kaur about two

days back. Jagsir Singh, who was living with her mother's sister in another village, had also come to village Tandia. The accused had, therefore, found an opportune time to commit the offence.

Learned counsel for the appellants further argued that all the three accused are real brothers and have been implicated on account of long-drawn enmity between the complainant and accused. He has pointed out that Jagraj Singh has not been attributed any injury having been caused to the deceased. He is stated to have only chased Mandar Singh. He has been implicated only because he was a witness in the murder case of Angrej Singh, in which the husband, brother-in-law and other relatives of Chhinder Kaur were convicted. Learned counsel further argued that Roop Singh was not at all present at the spot and he has been able to prove the alibi by producing DW1-Lakha Singh and DW2-Gurdial Singh. Lakha Singh is the Sarpanch of village Tandia, whereas, Gurdial Singh is Sarpanch of Atla Kalan where Roop Singh had gone to attend the cremation of Pritam Singh, brother-in-law of Lakha Singh. We are not satisfied with the plea of alibi set up with regard to Roop Singh. The evidence on record is not sufficient to prove that it was physically impossible for the accused to be present at the place of occurrence. Even no suggestion was put to PW4-Chhinder Kaur and PW5-Mandar Singh that Roop Singh had gone to attend the cremation of Pritam Singh along with Lakha Singh, DW1. Village Atla Kalan is 35/36 kilometres away from village Tandia and one can cover the said distance in

40-45 minutes in a car or jeep. Even otherwise, Roop Singh is a collateral of Lakha Singh, therefore, it is likely that he would support him with regard to plea of alibi. Lakha Singh is Sarpanch of village Tandia. In case the accused had been implicated falsely, he would have certainly approached the higher authorities with regard to their false implication. Moreover, it is also not proved by any cogent evidence that cremation of Pritam Singh had taken place from 11.00 A.M. to 3.00 P.M. on 20.2.1996.

Learned counsel further argued that injuries No.1 and 2 have been attributed to accused Bhappa Singh while Roop Singh is attributed injury No.3, which is simple in nature.

Taking into consideration the ocular testimonies of PW4-Chhinder Kaur and PW5-Mandar Singh, which have also been supported by the medical evidence, we are of the view that prosecution has been able to prove its case beyond doubt against accused Bhappa Singh and Roop Singh. However, it is evident from the evidence on record that Jagraj Singh did not cause any injury to Jagsir Singh. Only allegation against him is that he had chased Mandar Singh and did not cause any injury to him. Therefore, keeping in view that accused and complainant had strained relations on account of previous enmity, Jagraj Singh might have been implicated along with the other two accused. In criminal cases, the complainant party being overjealous, often rope in more persons to wreck vengeance on the accused persons.

In view of the above discussion, we find no merit in the appeal qua accused Bhappa Singh and Roop Singh. Accordingly, we uphold the conviction and sentence of both these accused. However, the conviction and sentence awarded to accused Jagraj Singh is set aside and he is acquitted of the charges framed against him. It is ordered that Jagraj Singh, if in custody, be set at liberty forthwith, if not wanted in any other case. In case he is on bail, his sureties/bail bonds shall stand discharged.

Chhinder Kaur, complainant has filed the aforesaid Criminal Revision No.1221 of 1997, for awarding compensation on account of death of her son Jagsir Singh, who was a young man of 21 years and working as driver. Learned counsel for the petitioner has submitted that elder son of Chhinder Kaur is of unsound mind and her entire family was dependent on the income of Jagsir Singh only. Her husband Gurdev Singh is already undergoing life imprisonment. Thus, she has no source of income.

Taking into consideration the nature of crime and the status of family of the victim, we find the claim of the revisionist to be just and fair and accordingly, award a sum of Rs.50,000/- (Rupees Fifty Thousand only) as compensation to the revisionist/complainant for the irreparable loss suffered by her and her family. The amount of compensation shall be paid by both the accused equally within two months from today. In case the compensation is not paid, the accused shall further undergo rigorous

imprisonment for three years each in addition to the sentence already awarded to them.

The appeal as well as revision petition stand disposed of in the above terms.

(NIRMAL YADAV)
JUDGE

August 23, 2007 **(JASBIR SINGH)**

pc **JUDGE**